

SPECIAL CIVIL APPLICATION NO.3059 OF 1995

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CORAM : C.K. THAKKAR, J.

(16TH NOVEMBER, 1995)

Oral Order :-

This petition is filed by the petitioners for an appropriate writ, direction or order, quashing and setting aside an action of the High Court of Gujarat (respondent herein) in not calling them for consideration for being included in Select List for promotion to the post of Section Officers on the establishment of the respondent. The said action is illegal, arbitrary, discriminatory and violative of their fundamental rights guaranteed under the Constitution of India.

It is the case of the petitioners that they are working in the High Court. They have joined services under the establishment of the High Court as Junior Clerks between 1969 and 1978. They were promoted to the post of Assistants, except petitioner No.1, who was appointed as Translator, and is working as such. According to the petitioners, all of them are eligible under the Rules to be considered for promotion and / or selection to the post of Section Officer in the pay scale of Rs.2000-3500. However, for one reason or the other, their cases have not been considered and they were not called for interview. The said action of the respondent-High Court is illegal, ultra vires, arbitrary, unreasonable and requires to be interfered with by this Court. At the time of admission, following order was passed on April 21, 1995 :-

"... Before the matter could proceed for admission hearing the Ld. Registrar of this Court has filed a statement in this petition. Pursuant to this statement, Mr.Padiwal, L.A. seeks permission to withdraw this petition at this stage. Permission granted. Disposed of accordingly...."

Thereafter, on the same day, further order was passed :-

"... After the above order was passed, Mr.Padiwal submits that he has instructions to pray for recalling the above order on the ground that some persons other than 35 persons, who are already working as Section Officers on ad hoc are called for interview. He is permitted to revive this petition. The aforesaid order is recalled.

Heard Mr.Padiwal. Notice returnable on 28/4/95.

It would be open to Mr.Padiwal to present the case of the petitioners before the Hon'ble the Chief Justice since according to the say of Mr.Padiwal, a representation dtd. 19/4/95 has already been given by one of the petitioners to the Ld. Registrar of this Court. However, it is made clear that the process of interview is not stayed...."

Pursuant of the notice issued by this Court, respondent appeared and an affidavit-in-reply is filed by Mr.J.K. Patel, Registrar of the respondent-High Court. Today, the matter is called out for hearing.

Mr.A.D. Padiwal, learned counsel for the petitioners, raised various contentions. He contended that under the Rules, the petitioners are eligible to be considered for promotional post of Section Officers, and yet they were not called for interview. He submitted that looking to the record and reading affidavit-in-reply, it is clear that the respondent-High Court has now come forward with the case that the petitioners are not eligible for Section Officers, but since New Rules have come into force, and they are eligible under the New Rules, their cases are required to be considered. It was also argued that the petitioners were called for interview and letters were addressed. Subsequently, however, they were withdrawn. The counsel submitted that the petition is filed against the respondent-High Court on administrative side. As per settled law, the administrative side of the High Court is expected to place all relevant record on the judicial side of the High Court. Except bare assertion on the part of the Registrar of the respondent-High Court, nothing was placed on record by the respondent-High court as to why letters calling the petitioners for interview were cancelled and they were treated as ineligible. Relying on Office Order dated June 30, 1993, Annexure 'D' to affidavit-in-rejoinder, it was contended that the respondent-High Court itself was of the opinion that after coming into force of New Rules, all posts of

Section Officers were required to be filled in, under New Rules but, thereafter, the respondent-High Court has changed its stand, which is not permissible in law.

Mr.Shelat, on the other hand, supported the action taken by the respondent-High Court and submitted that since the petitioners were not eligible under the old Rules, their cases could not be considered. Mr.Shelat contended that earlier, The High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1964 (Old Rules) were in operation. They remained in force till August 31, 1992. With effect from September 1, 1992, "The High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1992 (New Rules) came into force. In paras 4 and 5 the deponent has stated:-

"...4. I submit that the true facts leading to the filing of the present petition are as under. I submit that a Select List of Promotion to the post of Section Officer on the Establishment of the High Court of Gujarat was to be prepared in respect of 35 vacancies existing prior to 1st September, 1992. I submit that under the Rules prevailing prior to 1st September, 1992, the first petitioner was not eligible for consideration for the post of Section Officer. Petitioners Nos. 2 to 6 having not passed their Higher Standard Departmental Examination, they were also not eligible for consideration according to old rules. Petitioners Nos. 1 to 6 were, therefore, excluded from consideration for appointment to the post of Section Officer. The posts were to be filled in according to old rules in respect of 35 vacancies that had arisen prior to the new Rules came into force. Under the old Rules, the eligibility for promotion to the post of Section Officer was from the Cadre of Assistants only. I submit that the oral interview that was fixed on 22nd and 23rd April, 1995, was only in respect of 35 vacancies existing since prior to 1st September, 1992, i.e. before new rules came into force, and only those employees holding the post of Assistant and who were otherwise eligible, according to old rules, were called for interview for further consideration.

5. I submit that for the vacancies arising after

the new Rules coming into force from 1st Sept. 1992, the Selection process is yet to commence and all those employees who are eligible under the new Rules will be considered. I submit 35 employees were given promotion as Section Officers on ad hoc basis, on the basis of seniority only, and these Section Officers and 39 Assistants who were otherwise eligible for promotion according to old rules, have been considered by the Selection Committee, and were called for oral interview. I say that vacancies of Section Officers which have fallen vacant after 1.9.92, are not to be filled in by the said interviews. They are to be filled as per new rules. In that process of selection, Section Officers and Assistants who would not succeed, will be called for selection test as per new rules...."

From the above two paragraphs, it is clear that the stand of the respondent-High Court is that the vacancies which arose prior to coming into force of New Rules, were to be filled in, in accordance with the Old Rules. For considering eligibility or otherwise of the candidates to those posts, the respondent-High Court was bound to consider as to whether under the Old Rules, the candidates were eligible or not. It is not in dispute by and between the parties that the petitioners were not eligible under the Old Rules. According to the deponent, all vacancies, which had arisen after 1st of September, 1992, will be filled in under the New Rules. It is the contention of Mr.Padiwal that under the New Rules, all the petitioners are eligible and hence, their cases are required to be considered.

In my opinion, the action of the respondent-High Court cannot be said to be arbitrary, unreasonable or unlawful. On the contrary, looking to the decisions of the Apex Court, it is clear that the respondent-High Court has to fill in vacancies, which had arisen prior to coming into force of the New Rules, under the Old Rules. Mr.Shelat, in this connection, invited my attention to a decision of the Honourable Supreme Court in Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, AIR 1983 SC 852. In that case, the Rules which were in force, came to be amended in 1977. The question was of filling up of posts prior to the amendment of 1977. The Court held that the vacancies, which were there prior to the amendment came into force, were required to be filled in under the Old Rules and not under the New Rules. In

paragraph 9, it was observed as under :-

"... Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representative petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules...."

The same principle was reiterated by the Honourable Supreme Court in P. Mahendran and others v. State of Karnataka and others, AIR 1990 SC 405. In P. Mahendran's case (*supra*), the Honourable Supreme Court observed that it is well settled that Rules framed under the proviso to Article 309 of the Constitution of India must be construed as prospective and if selection process is started under the Old Rules, it must be completed in accordance with the law as it stood at the time of the commencement. In the instant case, it is the stand of the respondent-High Court that the vacancies, which had occurred prior to 1st September, 1992, were to be filled in under the Old Rules. It cannot be said that the said action is arbitrary or unreasonable. It is according to law. It is contended by Mr. Padiwal that the vacancies would not have fallen vacant only in the year 1992 and, hence, there was considerable delay on the part of the respondent-High Court in filling vacancies, which might have occurred during various years, such as 1989, 1990, 1991 and 1992. But the fact remains that 35 vacancies

were there before the new Rules came into force and they could be filled in only under the Old Rules. The action of the respondent-High Court cannot be termed as unlawful or contrary to law.

Regarding Annexure 'D', in my opinion, while interpreting Statutory Rules, the Court will have to interpret as they are. Therefore, even if it is observed that certain promotions would be subject to the inclusion of those Officers in the selection list when finalised, in view of the provisions of the New Rules, it would not change legal position. Hence, that order does not help the petitioners.

For the above reasons, I do not see any substance in any of the contentions of the learned counsel for the petitioners. The petition requires to be dismissed and is accordingly dismissed. Notice is discharged. No order as to costs.

16th November, 1995. (C.K. THAKKAR, J.)
